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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,185	07/29/2003	Hidefumi Yoshizoe	NEC 219824	7204
27667	7590	06/30/2005	EXAMINER	
HAYES, SOLOWAY P.C. 130 W. CUSHING STREET TUCSON, AZ 85701			SCHECHTER, ANDREW M	
			ART UNIT	PAPER NUMBER
			2871	

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/629,185

Applicant(s)

YOSHIZOE, HIDEFUMI

Examiner

Andrew Schechter

Art Unit

2871

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 2,5,7 and 8.
Claim(s) rejected: 1,3,4,6 and 9-12.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


Continuation of 11. does NOT place the application in condition for allowance because:

The applicant argues that the rejections in the previous action are in error. This is not persuasive.

The applicant [p. 6] takes issue with the examiner's statement that each of the references "may or may not" disclose the air forming members formed with the auxiliary member, and argues that the examiner has employed hindsight reasoning. This is not persuasive. In each reference, the two elements are shown in the same layer, and appear to have been made of the same material at the same time, in a single step of patterning a layer initially formed to cover the entire substrate. This is the conventional manner of making such features in the art, and one of ordinary skill in the art would certainly tend to assume that they were formed together. However, the examiner recognizes that there is no explicit statement in the references that they are formed together, so it appears to the examiner that the references fall just short of anticipation. In each case, the alternatives are to form them together using a single production step, or to perform an additional production step to make the elements separately. While it is possible to do the latter, it would certainly have been obvious to one of ordinary skill in the art at the time of the invention to do the former, as argued in the rejections.

The applicant states [p. 6-7] with reference to Furushima that it is not understood how the examiner proposes to connect the dummy seal with each of the six seals to form an air forming member as required by claim 11. The examiner does not propose to do so. The confusion appears to be based on a misreading of the rejection and how the claim elements are matched to the reference elements. Furushima discloses a dummy seal [4] which is the "auxiliary member" in claim 11, and six seals [3] which are the "seal member" in claim 11. There is no requirement in claim 11 that the seal member and the auxiliary member (dummy seal) are connected with each other, much less that they are connected to form an air outlet forming member. Rather, the air outlet forming member [the vertical extensions of 3 at the top of each region 8] are connected to the injection inlet [the opening in 3] as required by the claim; claim 11 requires the air outlet forming members to be formed with the auxiliary member, as discussed in the above paragraph, but not that they be connected. The situation with the Lee and Sakai references is analogous. While the structures in the references may be different than in the application, they do meet the present claim language. The examiner calls the applicant's attention to the details of the rejections, in particular the identification between the elements in the references and in the claim limitations.

Continuation of 13. Other: The amendment to claim 11 overcomes the previous objection to claim 11.


Andrew Schechter
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Technology Center 2800
27 June 2005